Quarterly Report

of the

ATTORNEY GENERAL

of

ALABAMA

For The Period

From July 1, 1960

Through September 30, 1960

VOLUME 100

MacDONALD GALLION, Attorney General

1961

QUARTERLY REPORT

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TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from July 1, 1960, through September 30, 1960, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama, 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of service, I shall be glad to hear from you.

Sincerely,

MacDONALD GALLION
Attorney General.

MacDONALD GALLION
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OPINIONS

July 11, 1960

Honorable Wiley C. Allen, Superintendent
Choctaw County Board of Education
Butler, Alabama

Schools — County Boards of Education — State Board of Education — State Superintendent of Education.

1. (a) In school systems having no semi-annual promotion of pupils, a child, in order to enter school must be six years of age on or before October first prior to the opening of school for that school year, which begins with the first day of July and ends with the thirtieth day of June of each year.

(b) Such is applicable to a child who had been in school in another state and transfers to Alabama during the school term.

2. County Boards of Education have authority to provide for a policy of semi-annual promotion of pupils subject to the approval of the State Board of Education and the State Superintendent of Education.

3. Individual promotions may be made by the County Board of Education from one grade to another, or to a second higher grade depending upon the ability, intelligence and readiness of the pupil for such higher grade.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of July 1, 1960, is as follows:

"I am writing to you to request an opinion in regard to Code of Alabama, Title 52, Paragraph 298, in regard to the minimum age at which children may enter school in Alabama.

"1. Can a child be enrolled in school in Alabama if the child had been in school and transfers from another State to Alabama during the school term, if the child is not six years of age on or before October first. There are some State laws that allow a child to enter school, if the child's birthday is after October first. These students may move from one state to another during the school year.

"This County Board of Education does not have an organization for a

semi-annual promotion of students during the school year; therefore, we do not admit students to school at the beginning of the second semester of the school year, if the child's birthday is on or before February first.

"2. Can the Choctaw County Board of Education adopt a policy to allow a semi-annual promotion of pupils during the school year and allow students to enter school at the beginning of the second semester if the child is six years of age on or before February first? If so, does the State Board of Education and State Superintendent of Education have the authority to approve or not approve this policy?

"3. If a child is in the second grade in school in another State who is six years of age on October 4, 1960, and moves to Alabama after the school term starts in Alabama, can this child be enrolled in school in Choctaw County, Alabama? If so what records would be needed before the child could be enrolled?

"4. Can a child be promoted from one grade to another during the school year if the County Board of Education does not have an organization for semi-annual promotion of pupils. Who has the authority to promote a child from one grade to another?

"5. Can the Choctaw County Board of Education allow a student to enroll in Choctaw County whose birthdate is after October 1, 1960, if the parents agree to pay a tuition fee of $200.00 per child per year"?

The following is provided by Act No. 4, General and Local Acts, Second Special Session, 1950, page 24:

"A child who is six years of age on or before October first shall be entitled to admission to the public elementary schools at the opening of such schools for that school year or as soon as practicable thereafter; a child who is under six years of age on October first shall not be entitled to admission to such schools during that school year, except that a child who becomes six years of age on or before February first may, on approval of the board of education in authority, be admitted at the beginning of the second semester of that school year to schools in school systems having semi-annual promotions of pupils."

The above is the last expression of the Legislature on the matter and applies to all children, whether moving into this State from another state or not.

The term "school year" means "scholastic year" as that term is defined in Section 1, Title 52, Code of Alabama 1940, and does not refer to the period of time during which schools are actually open for the instruction of pupils. It begins with the first day of July and ends with the thirtieth day of June of each year. **Marshall County Board of Education vs. State**, 252 Ala. 547, 42 So. 2d 24.

I find no exceptions as above noted relative to children who may transfer from another state to Alabama.

It is my opinion therefore that your first, third and fifth questions should be answered in the negative, your school system not having a semi-annual promotion of pupils.

By virtue of Title 52, Section 62, Code of Alabama 1940, the general administration and supervision of the public schools of the educational interests of each county is vested in the county board of education. The effect of this section is a delegation of complete control of the educational affairs of the county, to be exercised in its discretion, except as limited by law. Biennial Report of Attorney General, 1934-36, page 263; Quarterly Report of Attorney General, Volume 64, page 33, Volume 13, page 95.

The State Board of Education exercises through the State Superintendent of Education and his professional assistants general control and supervision over the public schools of the State. Section 14, Title 52, Code of Alabama 1940.

It prescribes rules and regulations for the grading and standardizing of public schools. Section 16, Title 52, Code of Alabama 1940.

The State Board of Education on the recommendation of the State Superintendent of Education prescribes the minimum contents of courses of study for all public elementary and high schools in the State. Section 17, Title 52, Code of Alabama 1940.

The right to review actions and orders of county and city boards of education may be given to the State Superintendent of Education under rules and regulations promulgated by the State Board of Education. Section 34, Title 52, Code of Alabama 1940.

In view of these various statutory provisions, I am of the opinion that your two questions contained in the paragraph numbered 2 should be answered in the affirmative.

It is generally stated that under its general power to prescribe rules for the school government, a school board may prescribe rules governing tests and examinations for promotion. Double promotion of a pupil from one grade to the second higher grade without attendance in the intervening grade is discretionary with the board in the light of the pupil's ability, intelligence, and readiness for the higher grade. 79 C.J.S., School and School Districts, Section 484 at page 428.

It is my opinion, therefore, that individual promotions are to be determined by the county board of education as above stated at such times and manner as it may reasonably determine necessary and proper.

It is doubted that any wholesale application of the above will be attempted but rather reserved for those outstanding students of unusual ability who may sometimes be referred to individually as "a genius."

Yours very truly,

MacDONALD GALLION
Attorney General

July 18, 1960

Honorable Curtis H. Rodgers, Clerk
Circuit Court
Covington County
Andalusia, Alabama

Bailiffs—Clerks of Circuit Courts—Costs and Fees—Jurors and Juries—Witnesses.

1. In change of venue cases, witness and juror fees are proper charges against the county of indictment only.

2. The clerks of both courts should submit a cost bill for those costs and fees actually incurred in the respective court constituting a proper charge against the State to the State Comptroller for payment.

3. Bailiffs' fees are a proper charge against the county of trial only.

Opinion by Assistant Attorney General Webb.

Dear Sir:

Your request for an official opinion bearing date of June 13, 1960, is as follows:

"In reference to the above subject on which you and I had a general discussion on last Friday afternoon at the Circuit Clerks and Registers Association Convention, I am enclosing copies of all papers which the Clerk of the Circuit Court of Conecuh County sent to me regarding this matter. From Exhibit I you will note that the Clerk of the Circuit Court of Conecuh County has billed the Covington County Board of Revenue for items which I am of the opinion is not due by the Covington County Board of Revenue.

"In reference to Exhibit I, I am of the opinion that the Finance Department is liable for all of the Sheriff, Clerk and Witness fees, and said Conecuh County Sheriff can receive payment for these items upon his transmitting a certified cost bill to the Finance Department.

"Exhibit No. 2 gives an itemization of witness fees and are referred to in Exhibit I. This, I believe to be an item which the Clerk of the Conecuh County Court should include in his cost bill to the Finance Department.

"In reference to Exhibit No. 3, I am of the opinion that the Covington County Board of Revenue is liable for the entire sum of $545.90, with the exception of the four items which I have checked off—these exceptions being for payment of Bailiff. For your information these claims of $5.00 each for Bailiffs' fees are made to Sheriff James M. Brock of Conecuh County and three of his Deputies.

"In view of the fact that the Sheriff and his Deputies draw compensation otherwise, I do not believe that these four $5.00 items are legitimate charges against the Covington County Board of Revenue.

"Therefore, concluded that my belief that the Finance Department would pay all of the costs created in this case with the exception of the costs of the Jurors, upon the submission by the Clerk of the Conecuh County Circuit Court to the State Finance Department, a certified cost bill for such items, I believe that the only item due by the Covington County Board of Revenue is for the cost of Jurors which amounts to $525.90, deleting the four $5.00 items alleged to have been for Bailiff services claimed by the Sheriff and three of his Deputies.

"If you believe that my conclusions are correct, I would appreciate your advising me if I would be in order in transmitting a certified cost bill to the State Finance Department for all of the costs, including a $15.00 fee for the Circuit Clerk (myself), the Sheriff fees, the Witness fees which accrued in this case before the Grand Jury and in this Circuit Court on the day on which the Presiding Judge of the Circuit Court of Covington County ordered the case removed to Conecuh County for trial.

"It will be appreciated if you will advise me as to the proper procedure which I must follow in closing this matter out."

In response to your first inquiry, that is, a charge for fees of Witnesses and Jurors, I wish to call to your attention the provisions of Title 15, Section 275, Code of Alabama 1940, which reads as follows:

"All fines and forfeitures in such cases go to the county in which the indictment was found, and judgment must be rendered accordingly; and the fees of all jurors and witnesses, on being properly certified by the clerk of the court to which the trial is removed, are a charge on the county in which the indictment was found, in like manner as if the trial had not been removed."

This section provides a charge against the county of indictment only, for juror and witness fees. See also Quarterly Report of Attorney General, Volume 78, page 40. It should be noted, however, that the charge against the county for witness fees under Section 275, supra, applies only to witnesses summoned to the trial, in this case, those witnesses summoned in Conecuh County, and does not apply to the grand jury witnesses summoned in Covington County. The fees for the grand jury witnesses should be submitted to the State in accordance with Title 45, Section 69, Code of Alabama 1940, as amended.

For all other costs and fees provided for as a proper charge against the State of Alabama under the provisions of Title 45, Section 69, supra, the clerks of the respective courts should submit a cost bill to the State Comptroller for those costs and fees actually incurred in their particular courts, with a proper notation showing this to be a case of venue change.

The charge referred to in your request for bailiffs, in my opinion, is an improper charge against Covington County. The bailiffs were obviously appointed under the provisions of Title 13, Section 186, Code of Alabama 1940, as amended, and the costs of such bailiffs are provided as a cost of the county of the trial, since bailiffs are not called for one trial only, but for general service.

Very truly yours,

MacDONALD GALLION
Attorney General

July 26, 1960

Hon. Roy D. Gist, Chairman
Board of Revenue, Jackson County
Scottsboro, Alabama

Counties—Funds—Jackson County

1. Sinking funds established for the retirement of bonds of a county or municipality may only be invested in bonds of the United States of America, or in bonds of the State of Alabama

or bonds of any county or municipal corporation of the State of Alabama or deposited in a bank on interest. Title 37, Section 265, Code of Alabama 1940.

2. A county governing body may not authorize a loan from a sinking fund of the county to the county general fund conditioned on repayment over a period of years, as this would not constitute an authorized investment of monies of the sinking fund.

3. A county may only borrow money for its general fund in conformity with Title 12, Sections 124-128, Code of Alabama 1940, as last amended by Act No. 512, Acts of 1959, page 1263.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion bearing date of July 14, 1960 is as follows:

"Under date of October 24, 1958, Quarterly Report of the Attorney General, Volume 93, page 14, an opinion was rendered to this office relative to the appropriation of funds from a Jackson County sinking fund which was derived from the proceeds of the special tax of one fourth of one per centum levied under Section 215 of the Constitution of Alabama 1901.

"Jackson County still has on deposit more than $100,000.00 in this sinking fund known as the Court House Building Warrant Fund.

"There is a balance of $132,000.00 unpaid on the Court House Building Warrants issued on January 1, 1954. The funds in this sinking fund derived from this special tax was earmarked by the annual tax levy by authority of the Board of Revenue and recorded in the minutes of said board and pledged to the payment of the principal and interest on said warrants each year since 1954.

"Your official opinion upon the following question is hereby requested.

"Would it be legal for the Board of Revenue to authorize that the General Fund of Jackson County borrow the sum of $40,000.00 from this special Court House Building Warrant Fund, to be repaid at the rate of $10,000.00 per year plus interest at the rate of two and one half per cent per annum in order to create a surplus in the Jackson County General Fund and then appropriate same to the Jackson County Board of Education to be used for general school purposes in Jackson County?"

In my opinion your inquiry must be answered in the negative.

In the former opinion of this office, referred to by you in your request, and reported in Quarterly Report of Attorney General, Vol. 93, page 14, it was stated that when the proceeds derived from the special levy of one-fourth of one per centum provided for by the proviso to Section 215 of the Constitution of Alabama 1901 have been pledged to the retirement of outstanding indebtedness, such funds may not be used for other authorized purposes unless such indebtedness is paid. It was further pointed out that the proceeds of the special levy provided for by the proviso to Section 215 of the Constitution of Alabama 1901 must be used exclusively for the purposes for which levied and collected. I gather from your present request that you are making reference to the same levy and revenue resulting therefrom as that considered in the opinion mentioned above. I also understand that such levy and pledge of the resulting revenue continues in effect under the same conditions as stated in the prior opinion above mentioned.

To answer your instant inquiry it is necessary that we consider the use which may be made of any surplus existing in county sinking funds. The statutory provision of law relating to such matter is found in Title 37, Section 265, Code of Alabama 1940, which provides, in part, as follows:

> "All sinking funds provided for the retirement of bonds shall be invested in bonds of such subdivision, or in bonds of the United States, or in bonds of the State of Alabama, or in bonds of any county in the State of Alabama, or any municipal corporation of the State of Alabama, or deposited in bank on interest provided; however, that the proceedings authorizing any funding or refunding bonds may prohibit the investment of the sinking fund for such bonds and require that such sinking fund shall be used exclusively in the purchase for retirement, or in the redemption of such funding or refunding bonds . . . "

This particular statute has been considered by this office in several former opinions. In Biennial Report of Attorney General 1934-36, page 298, it is pointed out that sinking funds providing for retirement of bonds must be invested in bonds of the United States of America, or in bonds of the State of Alabama, or bonds of any county of the State of Alabama, or any municipal corporation of the State of Alabama, or deposited in a bank on interest. This opinion has been cited with approval in at least two subsequent opinions found in Quarterly Report of Attorney General, Vol. 10 at pages 55 and 74. In each instance, it was concluded that sinking funds may only be invested in conformity with the requirements of what is now Title 37, Section 265, supra.

It might be noted that in the latter of the above mentioned opinions, found in Volume 10, page 74, supra, such opinion is distinguished from two other former opinions of this office. These two latter opinions were issued during the depression years of the 1930's and have application only to situations of financial crisis when necessary governmental functions are in danger of collapsing for lack of financing. I find nothing in your request indicating such conditions to now exist in Jackson County and, in fact,

I am quite sure that such is not the situation in yours, or other counties of the state. Accordingly, I am of the opinion that any sinking funds on hand in your county, if invested, must be so invested in accordance with Section 265, supra. In my further opinion, the proposition which you outline in your request whereby some $40,000 of the sinking funds here considered would be loaned to the general fund of the county would not be in keeping or in accordance with the terms of Section 265, supra, and hence, would be prohibited.

I should also mention that the question of whether your general fund would be authorized to make a loan of $40,000 at this time, for this or other purposes, must be considered in the light of Title 12, Chapter 9, Sections 124-128, Code of Alabama 1940. I should point out that Section 125 of the above statutes was amended by Act No. 512, Acts of 1959, page 1263, and the provisions of such act now have application to temporary loans made by our counties. Any loans obtained by your general fund would be required to be made in accordance with these statutes, and the amendatory act cited, and such should be closely examined before your county seeks to borrow money for its general fund.

In view of all of the above I must advise that in my opinion, it would not be permissible for the general fund of your county to borrow the amount mentioned from the money on hand in the sinking fund here considered.

Very truly yours,

MacDONALD GALLION
Attorney General

August 9, 1960

Hon. Bernard A. Reynolds
Judge of Probate
Dallas County
Selma, Alabama

Elections—Counties—State and State Departments—Comptroller.

1. Under the provisions of Act No. 160, Acts of Alabama 1955, a county is entitled to reimbursement of all expenses incurred in holding and conducting an election in which no candidates for county office appear on the ballot.

2. In those cases where a candidate for county office appears on the ballot in the first primary and does not appear in a second primary, the county is entitled to reimbursement by the State for one-half of the cost of holding the first primary and reimbursement for all of the expenses in connection with the holding of the second primary.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

I have your request for an official opinion, bearing date of May 27, 1960, which is as follows:

"Section 2 of Act No. 160 of the 1955 Acts of Alabama, Organizational Special Regular Sessions, reads as follows:

" 'Section 2. The State of Alabama shall reimburse a county for one half of all sums expended by the county in payment of expenses incurred in holding and conducting an election in which candidates for both federal or state and county officers are nominated or both federal or state and county officials are elected.'

"Section 3 of the same Act reads as follows:

" 'Section 3. The State of Alabama shall reimburse a county for all sums expended by the county in payment of expenses incurred in holding and conducting an election in which only candidates for federal or state offices are nominated or federal or state officials are elected.'

"All candidates running for nomination to County offices in Dallas County in the May 3rd Democratic Primary Election were without opposition and consequently were considered the nominees of the Democratic Party for the specific office for which each ran and their names did not appear upon the May 3rd ballot.

"The question which we would like you to answer is as follows: Is Dallas County entitled to be reimbursed for all sums expended for said County in the payment of expenses incurred in holding and conducting the 1960 May Election, as authorized under Section 3 of said Act No. 160 of the 1955 Organizational Special Regular Sessions of the Legislature, or is Dallas County entitled to be reimbursed for one half of all sums expended by the County in holding and conducting the 1960 May Election. as authorized under Section 2 of said Act No. 160?

"Your official opinion on this question will be appreciated."

Before proceeding to an answer of your inquiry, I deem it advisable to include a second question, this question being: In those counties in which candidate for county office appear on the ballot in the first primary and do not appear on the ballot in the second primary, to what reimbursement is the county entitled?

In answer to your first question, it is my opinion, under the facts stated by you, that Dallas County is entitled to reimbursement for all sums expended by said county in payment of expenses of holding and conducting the primary election held in May 1960.

Section 344 of Title 17, Code of Alabama 1940, as amended, provides in primary elections, if a legally qualified candidate for nomination to an office is unopposed, when the last date for certifying candidates has passed, then in that event his name shall not be printed on the ballot used in the primary election and such person shall be the nominee of the party with which he has qualified for office.

It, therefore, appears from the above-quoted code section that no candidate for county office in Dallas County appeared on the ballot in the May primary.

Therefore, under the provisions of Section 3 of Act No. 160, supra, the State of Alabama should reimburse Dallas County for all sums expended by the county in payment of expenses incurred in holding and conducting the said primary election.

In answering the question added to your request, it is my opinion that the counties which find themselves in the position set out under the provisions of Section 2 of Act No. 160, supra, should be reimbursed for one-half of the expenses incurred in the initial primary election.

It necessarily follows that in the run-off election where no candidate for county office appeared on the ballot, the county should be reimbursed for all of the expenses incurred in holding and conducting the run-off election.

Yours very truly,

MacDONALD GALLION
Attorney General

August 12, 1960

Honorable Warren G. Jones
Sheriff of Marshall County
Guntersville, Alabama

Sheriffs — Counties — Statutes — Constitutionality — Marshall County.

1. That portion of Act No. 70, Special Session 1956, page 102, affixing the salary of the chief deputy sheriff of Marshall County at a figure different from that fixed by the general law is unconstitutional and void being in violation of Section 105 of the Constitution of Alabama 1901.

2. The opinion of this office found in Quarterly Report of Attorney General, Vol. 34, page 46, is hereby overruled and withdrawn.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion bearing date of July 28, 1960, is as follows:

"There is apparently a conflict between the provisions of a local law, Act No. 70, approved February 7, 1956, that applies only to Marshall County, Alabama, and the provisions of a general law, Code of Alabama 1940, Title 54, Section 3, approved September 18, 1957, regarding the salary of the Chief Deputy Sheriff of Marshall County.

"Your writer is the Sheriff of Marshall County, Alabama, and has in his employment a Chief Deputy Sheriff who has been receiving his salary under said Section 3.

"Would you be so kind as to render an opinion for me as to which, the local act, or Title 54, Section 3, is controlling with reference to the Chief Deputy Sheriff's salary."

The position of chief deputy sheriff is provided for by general law as found set out in Title 54, Section 3, Code of Alabama 1940, as amended. This particular section was last amended by Act No. 541, Acts of 1957, page 762, and provides that such chief deputy sheriff shall be paid a salary of not more than $2,400.00 nor more than $4,800.00 per annum, payable in equal monthly installments. However, I find that, insofar as Marshall County is concerned, Act No. 70, Special Session 1956, page 102,

prescribes a different salary range for the chief deputy sheriff of that county. This particular Act amends Act No. 64, Acts of 1951, page 283, and provides that the Chief Deputy Sheriff of Marshall County shall be paid not less than $275.00 nor more than $300.00 per month, to be fixed by the Board of Revenue of such county. It is obvious, therefore, that two different salary scales are provided for this particular officer, and to give answer to your inquiry it is necessary that I determine whether the general law as set out in Title 54, Section 3, supra, or the provisions of Act No. 70, supra, is applicable to the compensation of the chief deputy sheriff of your county.

Reference to the former opinions of this office discloses that they are in conflict on this point. In an opinion found reported in Quarterly Report of Attorney General, Vol. 34, page 46, it is pointed out that, where there is a conflict between a local act and a general act, the local act governs as to the county or territory to which it is applicable. This particular opinion considered a local act fixing the salary of the chief deputy sheriff of Blount County in an amount different from that established by the general law. The opinion concludes that the salary fixed by the local act is controlling. However, this opinion does not consider the question of the constitutionality of the local act there in question.

In Quarterly Reports of Attorney General, Vol. 18, page 68, and Vol. 48, page 173, this office did consider the matter of the constitutionality of local acts attempting to fix the salary of the chief deputy sheriff of a county at a figure different from that prescribed by general law. In each such instance it was concluded that the local act in question was unconstitutional and void and that the general law on this subject would prevail. The reasoning in such opinions is based upon the decision in the case of Evans v. Long, 227 Ala. 335, 149 So. 837, in which our Supreme Court considered this matter and concluded that a local act attempting to fix the salary of the chief deputy sheriff of a county at a figure different from that prescribed by general law would be unconstitutional and void, being in violation of Section 105 of the Constitution of Alabama 1901.

In my opinion the above authorities give full answer to the question which you have presented and I must hold that the portion of Act No. 70, supra, relating to the salary of the chief deputy sheriff of your county is unconstitutional and void and that the officer serving as the Chief Deputy Sheriff of Marshall County should be compensated in accordance with Title 54, Section 3, Code of Alabama 1940, as amended, supra.

The opinion of this office reported in Quarterly Report of Attorney General, Vol. 34, page 46, being contrary to the conclusion expressed herein is hereby expressly overruled and withdrawn.

Very truly yours,

MacDONALD GALLION
Attorney General

August 24, 1960

Mr. E. T. York, Jr., Director
Cooperative Extension Service
Auburn University
Auburn, Alabama

Counties — Auburn University — Employment, Employers and Employees

1. Persons employed by the Alabama Extension Service are to be considered employees of the Extension Service rather than employees of the various counties in which they may be stationed or serve.

2. It is the duty and authority of the Alabama Extension Service to establish policies for such employees governing leave, vacation and attendance at prescribed courses of instruction.

3. Funds of the various counties appropriated for use in the Extension Service program may be used in accordance with the policies and procedures established by such agency.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion bearing date of July 28, 1960, is as follows:

"We would greatly appreciate a ruling through your office concerning the legality of county governing bodies paying the salaries of employees of the Cooperative Extension Service during approved leaves of absence for purpose of study and professional improvement. Following is a statement of circumstances pertaining to such leave:

"Programs of the Cooperative Extension Service are supported financially by (1) Federal funds appropriated through the U. S. Department of Agriculture, (2) State funds appropriated through Auburn University, and (3) county funds expended by local county government bodies. Consequently, the salaries of employees of the Extension Service are derived from these three sources, operating under a Memorandum of Agreement between Auburn University and the U. S. Department of Agriculture and with an oral Memorandum of Understanding between the State office of our Extension Service and the county governing bodies.

"Recently, we have developed a policy which permits our professional employees to accrue 20 days of leave per year to be used for graduate study of other types of professional improvement activities. The use of this leave is not a right but a privilege. Such leave is not automatic, but is approved for a specific program of study which is intended to benefit the program of the Extension Service. I might add that most institutions have some type of sabbatical leave program of this nature. We feel, however, that this particular program is superior to that of any other we know.

"This plan has been approved by Auburn University and by the U. S. Department of Agriculture. Consequently, there is no question concerning the use of either Auburn University or Federal funds for this purpose. Several of our county officials, while not questioning the desirability of such leave, have raised a question concerning the legality of the county governing bodies paying the county's share of an individual's salary during his absence from his job while on study leave. We would appreciate your ruling on this matter.

"We would also appreciate your opinion on a somewhat related matter.

We have a policy which gives an employee so many days annual leave each year. He is permitted to accumulate and carry over a certain number of days not used during a current year. Upon an individual's separation from service through either retirement or resignation, we have followed the policy of paying the individual for his accumulated annual leave that portion of his salary derived from State and Federal funds. Some counties, however, have raised questions concerning the legality of their paying the county's share of this annual leave. There is no question, of course, concerning the legality of the county paying its share of annual leave when such leave is taken during the period of the individual's employment. The only matter of concern relates to the legality of county funds being used to pay for accumulated leave at the time of the individual's separation from service."

In my judgment, proper answer to the inquiries which you have proposed depends, in great measure, upon the type employees we are here considering. With this in mind, I have reviewed certain of the statutes relating to the Alabama Extension Service and I am of the opinion that those persons employed by such agency are to be deemed employees of the Extension Service, rather than employees of the various counties they may serve while so employed.

Title 2, Section 649, Code of Alabama 1940, makes provision for the creation of the Alabama Extension Service, while Section 650, supra, prescribes the objects, purposes and duties of such agency. Among these is the duty to provide for the continuance and improvement of farm and home demonstration work and for the training of men and women leaders in this field. Section 651 of said Title 2 provides that the Director of

the Alabama Extension Service, subject to the approval of the President and the Board of Trustees of the Alabama Polytechnic Institute (now Auburn University), shall have authority to appoint, discharge, and fix the compensation of all necessary assistants and employees.

Turning next to those statutes relating to the authority of the various counties to make appropriations for and to engage in such extension work, it is found that Title 2, Section 640, supra, empowers the governing bodies of the several counties to set aside, appropriate and make available from the general fund of the county certain sums of money, as specified in an election held for this purpose in each of said counties, and provides that such monies shall be used for the exclusive purpose of assisting in employing county farm and home demonstration agents and in paying any and all bills and other items in developing and carrying out a comprehensive, county-wide program for improving the agriculture and farm life of the county. Section 641, supra, empowers the county governing body of any county in which such an election has been held and approved to appropriate such additional sum, or sums, for this purpose as they may deem necessary.

It is my construction of these statutes that same provide for the establishment and operation of the Cooperative Extension Service mentioned by your inquiry. In my judgment such statutes further contemplate that this program will be administered by the agency so created, subject to certain jurisdiction and control of Auburn University. It is my further opinion that the employees of such agency are not to be deemed employees of the several counties of the state in which they are stationed or in which they serve, but rather employees of the central agency of control, the Alabama Extension Service. I feel, too, that under the statutes cited above, the several counties of this state in which same has been approved, may appropriate such sum, or sums, as are deemed necessary for the furtherance of this program in their respective counties, and that such money will be used in accordance with the memorandum of understanding which you indicate to exist between the Cooperative Extension Service and the various counties.

Turning to your two specific inquiries, it is my opinion that it would be the right and prerogative of the Cooperative Extension Service to determine the need and necessity of the attendance of employees of the Extension Service at the courses of study mentioned by you. If it be determined by the Extension Service that it would be in the best interest of such agency that these employees attend these courses of study, I feel that county funds which have been appropriated to the Extension Service by the various counties for its use in the furtherance of the Extension Service program may be used for this purpose.

Regarding leave and vacation policies for the employees of the Extension Service, here again it is my opinion that these are matters to be determined by the Cooperative Extension Service and not by each of the

several counties of the state in which these employees are stationed or serve. If it is the policy of the Extension Service that their employees be permitted to accumulate annual leave for which they will be paid upon termination of service, I feel that this policy, should and must, extend to each and all of the employees of such agency and not just to those stationed in counties approving such leave policy. I see no objection to such a policy upon the part of the Extension Service and feel that the funds thereof may be expended for such purpose, including money appropriated to the Extension Service by the various counties for use in the Extension Service Program.

To conclude, in my opinion, your agency, the Cooperative Extension Service, is vested with power and authority to establish policies for the conduct and management of such agency, and this power and authority does not rest with the various counties in which your employees are stationed or serve. It would be your duty and authority to establish proper rules and regulations concerning the attendance of your employees at courses of instruction, and to establish a uniform leave and vacation policy for such employees. The money appropriated to the Cooperative Extension Service by the several counties may be used by you in the furtherance of these policies, limited only by such mutual agreement as you may have entered into with the various counties. I do not feel that any other system of administration of your agency would prove satisfactory.

Yours very truly,

MacDONALD GALLION
Attorney General

September 7, 1960

Honorable Bert E. Thomas
Tax Assessor, Mobile County
Courthouse
Mobile, Alabama

Ad Valorem Taxes — Taxation — Exemptions.

1. Act No. 70, Second Special Session 1959, approved August 12, 1959, repeals Section 1(j), Title 51, Code of Alabama 1940.

2. In order to meet the definition of the term "blind person" as used in any statute of this State, that person must produce a certificate from a duly licensed ophthalmologist or optometrist showing that he has met the condition of blindness prescribed by Act No. 70, supra.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

Your request for an official opinion, bearing the date of July 18, 1960, is as follows:

> "Will you please advise us if Subsection 'J' of Section 1, of Title 51 of the 1940 Code of Alabama, as amended is repealed by Act No. 70, H-118, approved August 12, 1959.
>
> "If your answer to the above is in the affirmative, will you please further advise us if a statement from a licensed ophthalmologist or optometrist to the effect that an individual's vision 'with correcting glasses is so defective as to prevent the performance of ordinary activities for which the eyesight is essential,' is sufficient grounds to authorize a tax assessor in the State of Alabama to grant to such an individual the exemption of ad valorem taxes as authorized by Subsection 'F' of Section 2, of Title 51 of the 1940 Code of Alabama, as amended."

It is my opinion that Act No. 70, Second Special Session 1959, approved August 12, 1959, does repeal Subsection (j) of Section 1, Title 51, Code of Alabama 1940. Subsection (j), supra, reads as follows:

> "Blind persons as used in this title include all persons who have a vision with or without adjusted glasses suitable to the eye or to the individual not greater than what is known as 2/100 vision."

Section 1, Act No. 70, supra, is as follows:

> "As used in any statute of this State heretofore or hereafter enacted, unless the context requires a different meaning, the term 'blind person' means a natural person who has no vision or whose vision with correcting glasses is so defective as to prevent the performance of ordinary activities for which eyesight is essential; or who has central visual acuity of 20/200 or less in the better eye with correcting glasses; or whose central visual acuity is more than 20/200 in the better eye with correcting glasses but whose peripheral field has contracted to such an extent that the widest diameter of the visual field subtends an angular distance no greater than 20 degrees."

As can be seen from the two above-quoted provisions, the definition of "blind person" contained in Section 1 of Act No. 70 is entirely different from that contained in subsection (j), supra. Section 4, Act No. 70, supra, specifically states that all laws or parts of laws which conflict with this Act are repealed. Therefore, your first question is answered in the affirmative.

Your second question is also answered in the affirmative. Section 2, Act No. 70, supra, states:

> "The condition of blindness may be proved by a blind person claiming any rights or benefits provided under any statute of this State by certificate of a duly licensed ophthalmologist or optometrist."

Under the express language of the above-quoted section of the Act, the person claiming the exemption is allowed to prove same by presenting a certificate from a duly licensed ophthalmologist or optometrist which certificate must state under oath that that person meets the condition of blindness prescribed in Section 1 of said Act.

Very truly yours,

MacDONALD GALLION
Attorney General

September 7, 1960

Honorable Sam Engelhardt
Highway Director
State Highway Department
Montgomery 4, Alabama

Highways and Highway Department.

The Director of the State Highway Department, in his discretion and consistent with the other duties and functions of the Department, may authorize the use of departmental personnel and equipment in performing work upon areas adjacent to public highways, if work upon these areas is directly, or indirectly, beneficial to such public highway and the cost of such work is paid by the property owner.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion bearing date of August 23, 1960, is as follows:

> "Filling stations, theaters, restaurants and other drive-in places create a considerable amount of traffic to and from highways. Areas used

by motor vehicles adjacent to highways at such places become hazardous, costly to maintain, easily eroded and very dusty. Property owners adjacent to the highways at these places on many occasions have asked the State Highway Department to pave these turnout areas beyond the limits of the right-of-way.

In order that adjacent property owners may have proper ingress and egress to State highways, and in order to reduce State maintenance costs and cause a reduction of traffic hazards and erosion to the highways, the State of Alabama Highway Department requests your official opinion on the following question:

"Is it legal for the State of Alabama Highway Department to pave with its own forces such areas beyond the limits of the highway right-of-way at the expense of adjacent property owners (actual cost paid by the property owners to the State of Alabama Highway Department)?"

In my opinion, your inquiry should be answered in the affirmative.

This office has only recently considered a similar question with respect to the right of a county governing body to permit the use of its road equipment and personnel in the performance of work of a similar nature to that mentioned in your inquiry. In an opinion addressed to the Hon. W. M. Cousins, Jr., Judge of Probate, Elmore County under date of June 7, 1960, it was stated that:

"This office has drawn a sharp distinction between work performed and labor and materials furnished for private roads, driveways, etc., where such is without cost to the property owner and those cases where the reasonable cost is paid by the property owner. The previous rulings of this office may be stated to be that the authority of the county governing body to do or perform work or to rent or lease equipment of the county for private work is predicated upon there being no present need for the use of such personnel or equipment for public county purposes and upon the further fact that the county be justly compensated for the services rendered. These are matters to be determined in a reasonable manner by the county governing body."

See also Biennial Report of Attorney General 1928-30, page 586.

In my judgment, this same reasoning should apply and the same right and authority should be accorded your department. This office, as well as the post auditing agency of the state, has not previously questioned the right of the Highway Department to engage in such work, but has been of the opinion and has insisted that the Department require just compensation from the property owners for the work performed.

Accordingly, I advise that, under the facts stated, it lies within your discretion, consistent with the other duties and functions of your department, to permit the use of departmental equipment and personnel for the performance of the type work mentioned, conditioned upon the department receiving reasonable reimbursement for such work or materials furnished.

You point out that such adjacent areas, if not improved, become hazardous, costly to maintain, easily eroded and extremely dusty. You further indicate that this personally financed improvement upon the part of the property owners would serve to reduce state maintenance cost and, likewise, reduce traffic hazards, and erosion to state highways. Certainly, under these conditions, and in view of your duties with respect to the public highways of this state, you would be authorized to permit such work to be performed by state forces and equipment, subject to reimbursement being made by the adjacent property owners.

Very truly yours,

MacDONALD GALLION
Attorney General

September 8, 1960

Honorable Harry H. Haden
Commissioner of Revenue
State of Alabama
Montgomery, Alabama

Motor Vehicles — Ad Valorem Taxes.

1. Act No. 654, Acts of Alabama 1959, page 1583, which amends Title 51, Section 704, as amended, Code of Alabama 1940, expressly becomes effective October 1, 1960, starting with the tax year beginning October 1, 1960, and ending September 30, 1961.

2. While the ad valorem tax lien attaches as to motor vehicles on October 1, at the beginning of the tax year and such taxes are assessable at that time (and under Act No. 654, supra, the law day is extended for the entire tax year), such taxes do not become due and payable until the following October 1, at the end of the tax year, which in this instance is October 1, 1961.

3. The provisions of Act No. 654, supra, then requiring proof on the part of taxpayers as to when a car was brought into the State, or when it was taken out of the inventories of a dealer in this State, in the form of certificates, bills of sale, and affidavits do not become applicable until October 1, 1961. The State Department of Revenue, therefore, is not required to furnish to the tax assessors of this State the blank certificates as provided by the Act until October 1, 1961.

Opinion by Assistant Attorneys General Burton and Webb.

Dear Sir:

Your request for an official opinion bearing date of August 12, 1960, is as follows:

"I request your official opinion on the applicability of Act No. 654, Acts of Alabama 1959, page 1583. Specifically my questions are:

"1. Will taxes on motor vehicles paid during the period October 1, 1960-September 30, 1961, be paid pursuant to the provisions of Act No. 654, supra?

"2. Will a certificate be required of an automobile brought into the State of Alabama during the tax year October 1, 1960-September 30, 1961, to secure a license plate for the year 1961?

"For example, Richard Rowe brings an automobile into the State of Alabama on March 1, 1961, and March 5, 1961, he applies for a license plate, would he be required to pay ad valorem taxes on this automobile at that time if he cannot produce a certificate showing registration in the prior state. Second example, Richard Rowe buys an automobile new in the State of Alabama on March 1, 1961, and immediately thereafter applies for 1961 license plates, would he be required to pay taxes on this automobile at that time if he did not furnish a bill of sale or such other evidence showing that the automobile purchased was in the dealer's inventory stock for the tax year 1960-61."

In answer to your first question, I wish to state that Act No. 654, Acts of Alabama 1959, page 1583, under its own terms does not become effective until October 1, 1960, and would apply for the first time to the tax year beginning on October 1, 1960, and ending on September 30, 1961. However, ad valorem taxes on motor vehicles do not become due and payable for a tax year until the end of such year and on the following October first which, in this case, would be October 1, 1961, since the tax is payable for the preceding tax year. **Johnston V. State**, 245 Ala. 499, 17 So. 2d 662; Quarterly Report of Attorney General, Volume 85, page 11; Quar-

terly Report of Attorney General, Volume 81, page 73; Quarterly Report of Attorney General, Volume 76, page 58, and Quarterly Report of Attorney General, Volume 19, page 167. Consequently, the tax under Act No. 654 becomes due and payable for the first time on October 1, 1961 for the tax year beginning on October 1, 1960 and ending September 30, 1961.

In regard to your second question, it is my opinion that the certificates, bills of sale, and affidavits, or other proof on the part of the taxpayer would not be required under Act No. 654, supra, until October 1, 1961, which would be the date that such taxes would become payable for the first time under said Act. This being true, there would be no taxes due and payable under Act No. 654 during the tax year beginning October 1, 1960 and ending September 30, 1961, as the taxes due and payable during that period would relate back to the prior tax year, and would be governed by the provisions of Title 51, Section 704, as amended, Code of Alabama 1940, prior to being amended by Act No. 654, which law prior to said amendment required no such certificate of proof.

Thus, as applied to your first illustration as to Richard Rowe bringing an automobile into the State of Alabama on March 1, 1961, and on March 5, 1961, applying for a 1961 license plate, it is my opinion that he would not be required to produce a certificate showing registration in another state at that particular time in order to secure the 1961 license plate, as he would be governed by the law as it existed prior to the effective date of Act No. 654. However, on October 1, 1961, in order to secure his license plate for the 1962 year the said Mr. Rowe would have to pay taxes for the tax year beginning October 1, 1960, and ending September 30, 1961, unless he can produce a certificate showing registration in another state after October 1, 1960. In other words, no certificates will be required to be furnished to the tax assessor until October 1, 1961, as the provisions of Act No. 654 covering such certificates do not become applicable until that date.

As to your second example, where Richard Rowe buys an automobile whether new or used in the State of Alabama on March 1, 1961, and immediately thereafter applies for a 1961 license plate, he would not be required to furnish a bill of sale or other evidence showing that the automobile purchased was in the dealer's stock of goods or inventories for the tax year 1960 through 1961. This is true, for as previously stated, ad valorem taxes which are due and payable on October 1, 1960, are paid for the tax year beginning October 1, 1959, and ending September 30, 1960, which year is not covered by Act No. 654, but by the law as it existed prior to the effective date of said Act. However, as in the first illustration, and in order on October 1, 1961 to secure a 1962 license plate, the said Mr. Rowe would have to furnish to the tax assessor his bill of sale and such other proof as the tax assessor might require, that the car whether new or used was a part of the dealer's inventories for the tax year beginning October 1, 1960, and ending September 30, 1961, or pay ad valorem tax on the car for that tax year.

Moreover, the State Department of Revenue is not required to furnish tax assessors with the blank certificates specified under Act 654 until October 1, 1961.

Yours very truly,

MacDONALD GALLION
Attorney General

September 9, 1960

Honorable John E. Mandeville, Clerk
Circuit Court of Mobile County
P. O. Box 298
Mobile, Alabama

Judges — Circuit Courts — Court Reporters — Mobile County — Opinions Overruled, Modified or Distinguished.

1. A supernumerary judge, assigned to the circuit court of circuits having not less than four nor more than nine circuit judges (Mobile County) in addition to the regular circuit judges thereof and not in lieu of one of them, has authority to appoint a special court reporter to serve during such assignment, provided none of the regular court reporters are available for that duty.—Act No. 52, Acts of Alabama 1955, page 161 (Title 13, Section 270(1), Code of Alabama 1940, 1955 Cumulative Pocket Part).

2. Quarterly Report of Attorney General, Vol. 17, page 128 overruled and withdrawn.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your request for an official opinion bearing date of August 22, 1960 is as follows:

"General Act No. 52 of the Second Extra Special Session of the Legislature of Alabama of 1955, as set out in Section 270(1) of Title 13 of the 1955 Cumulative Pocket Parts of the Code of Alabama, states as follows:

"'(1) Each of the judges of such circuit courts of this state shall appoint a competent shorthand writer to perform the duties of official court reporters over the court in the circuit which said judge presides; . . .'

"For the past several years the dockets of this circuit court have been congested to the extent that it has on numerous occasions become necessary to request the Chief Justice of the Supreme Court of Alabama to assign various supernumerary circuit judges, from other counties, to this court for the purpose of assisting in the trial of cases in this court. And, there have been occasions during the times of the assignment of said supernumerary circuit judges to this court when such supernumerary circuit judges have had cases announced ready for trial with a jury, and when there was not an official court reporter available to report said cases because of the fact that all five of our regular official court reporters were already engaged in reporting cases before the regular circuit judges of this court, thereby making it necessary for one of our regular circuit judges to postpone or pass the case ready for trial before him and loan his official court reporter to the visiting supernumerary circuit judge, or to request the visiting supernumerary circuit judge to postpone or pass the case which had announced ready before him, for the lack of a court reporter to report said case.

"Now, my question to you is this: Do the provisions of the Act quoted above comprehend and authorize the appointment by a supernumerary circuit judge assigned to this court, by the Chief Justice, of another official court reporter to serve in the court in which he presides, during such assignment, and when one of the other regular official court reporters of the court is not available for this necessary duty?

"Since we will have such a visiting supernumerary circuit judge assigned here from September 12 through November 18, 1960, would you please let me have your opinion on this matter as soon as possible."

In answer to your inquiry, it is my opinion that a supernumerary circuit judge, assigned to your court by the Chief Justice in addition to the regular circuit judges thereof and not in lieu of one of them, has authority to appoint a special court reporter to serve during such assignment, provided none of the regular court reporters are available for that duty. This may be done under the provisions of Section 3 of Act No. 52, Acts of Alabama 1955, page 161 (Title 13, Section 270(1), Code of Alabama 1940, 1955 Cumulative Pocket Part).

Act No. 52, supra, provides for the appointment of official court reporters of the circuit courts in those circuits which are now, or which may hereafter, be composed of only one county and having not less than four nor more than nine circuit judges, provides for their qualifications, fixes their compensation, defines their duties and provides for the ap-

pointment of special reporters in such cases. The same is applicable to Mobile County.

Section 2 of Act No. 288, Acts of 1945, page 478 (Title 13, Section 195(2), Code of Alabama 1940, 1955 Cumulative Pocket Part), relating to supernumerary circuit judges, provides as follows:

> "Such supernumerary circuit judges shall take the oath of office prescribed by the constitution for judicial officers and shall have and exercise all the duties, power and authority of judges of the circuit courts, and shall, upon request of the Governor, or upon the request of the Chief Justice of the supreme court, preside at any regular, special or adjourned term of any circuit court in any of the judicial circuits of Alabama."

It will be noted that supernumerary circuit judges, when properly assigned, shall have and exercise all the powers, duties and authority of the judges of the circuit courts. I do not think the duties, power and authority above referred to apply to Section 1 of Act No. 52, supra, as that section relates to the appointment of regular official court reporters by each of the judges of such circuit courts. However, I am of the opinion that such duties, power and authority include those provided for in Section 3 of said Act, which reads as follows:

> "Section 3. Should the official court reporter herein provided for, on account of illness or other cause, be unable to report the testimony of any trial as is provided in this Act, the judge of the court shall have authority to appoint a special reporter to serve until his official court reporter can resume his duties in such court, the compensation of such special court reporter to be the same and paid in like manner as herein provided for official court reporters. In each of the circuits covered by the provisions of this Act, court reporters when not engaged in the discharge of their official duties, shall be subject to the direction of any judge of such circuit, it being the intention and purpose of this provision to avoid the necessity of appointing a special reporter whenever any official court reporter of the circuit is available."

When all of the official court reporters of such circuit are engaged in the reporting of other cases or otherwise unable to report the testimony of any trial, there appears to be a field of operation for Section 3 of Act No. 52, supra, in the event a supernumerary judge is appointed to serve in addition to the other regular judges of said circuit. Such would not be true, in my judgment, if said supernumerary judge was appointed to serve merely in lieu of one of the circuit judges as an appointment of a special court reporter would be made by said regular judge. It will be noted that under this section there is safeguard against the appointment of a special court reporter in the event any one of the regular official court reporters of the circuit is available. This safeguard is applicable to the reporting of the cases heard before the supernumerary judges.

It would seem untenable that the legislature would provide for a supernumerary judge to be appointed to serve in any particular circuit court of this state, and at the same time not have intended to have a court reporter report the cases heard before him in the event a regular court reporter is unavailable.

Section 3 of Act No. 52, supra, is in practically the same verbiage as Title 13, Section 265, Code of Alabama 1940. In an opinion of this office reported in Quarterly Report of Attorney General, Vol. 17, page 128, it was held that an additional special court reporter was not authorized to be appointed under Section 265, supra, for a special judge when the regular court reporter was engaged in reporting cases before the regular circuit judge. That opinion, being in conflict with the conclusions hereinabove reached, is hereby overruled and withdrawn.

Very truly yours,

MacDONALD GALLION
Attorney General

September 20, 1960

Honorable J. C. Camp
County Solicitor
Marengo County
Linden, Alabama

Housing Authority — Municipalities — Officers and Offices — Records.

1. Certain papers and documents made or received by a housing authority are public records.

2. The secretary of a housing authority is not a public officer.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of August 22, 1960, is as follows:

"I request an official opinion on the following matters:

"The Housing Authority of the City of Demopolis, Alabama, was incorporated under the provisions of Title 25, Section 7, Code of Alabama, 1940, as a public body and a body corporate and politic. The certificate of incorporation was issued by the Secretary of State on the 28th day of September, 1951. The Authority is composed of five commissioners appointed by the Mayor of the City of Demopolis.

"The Authority employs a Secretary, who is Executive Director, and who has custody of the records of the Authority under by-laws adopted by the Authority.

"1. Are the records of the Housing Authority of the City of Demopolis, Alabama, public records, subject to the provisions of Title 41, Article 2, Code of Alabama, 1940?

"2. If the records of the Housing Authority of the City of Demopolis are public records, then is the Secretary of the Housing Authority of the City of Demopolis, Alabama, a public officer within the meaning of Title 41, Article 2, Sections 146 and 147?"

Your letter, under date of August 30, 1960, reads as follows:

"On August 22, 1960, I requested an opinion on certain matters, and under Item 2 thereof I would like to add the following: The public records sought under this opinion being the by-laws, rules and regulations, minutes of the meetings of the Commissioners, executed contracts and agreements, adopted urban renewal plans and financial statements."

The Housing Authority of the City of Demopolis is a public corporation and a governmental agency operated under Title 25, Chapter 2, Code of Alabama 1940. See **Housing Authority of Birmingham Dist. v. Morris**, 244 Ala. 557, 14 So. 2d 527. Its commissioners are public officials. Cf. Quarterly Report of Attorney General, Vol. 66, page 99.

Section 1 of Act No. 293, General Acts 1945, page 486, reads as follows:

"Public records comprise all written, typed, or printed books, papers, letters, documents and maps made or received in pursuance of law by the public officers of the State, Counties, municipalities, and other subdivisions of government in the transactions of public business, and include also any record, authorized to be made by any law of this state, belonging or pertaining to any court of record, justice of the peace, or any other public record authorized by law, or any paper, pleading, exhibit, or other writing, filed with, in or by any such court, office or officer."

The above definition of public records is very broad and inclusive

and, in my opinion, includes those papers and documents mentioned in your letter of August 30, 1960. See also Title 41, Section 139, Code of Alabama 1940.

The statutes codified as Title 41, Chapter 3, Article 2, Code of Alabama 1940, to which your request refers grants to citizens the right to inspect and copy public records.

Therefore, in answer to your first question, I am of the opinion that the papers and documents to which your letter of August 30, 1960, refers are public records and are subject to the provisions of Chapter 3, Article 2, supra.

By virtue of Title 25, Section 8, Code of Alabama 1940, the Housing Authority of the City of Demopolis is operated by a commission consisting of five members. As pointed out above each commissioner is a public officer.

Section 8, supra, authorizes the commission to employ a secretary, fix his salary and determine his duties.

Since the secretary of the Housing Authority of the City of Demopolis is an employee of the Authority who performs his duties at the direction of the commission, I am of the opinion that he is not a public officer: Quarterly Report of Attorney General, Vol. 54, page 41.

Therefore, your second question is answered in the negative.

Very truly yours,

MacDONALD GALLION
Attorney General

September 22, 1960

Honorable Ralph P. Eagerton
Chief Examiner of Public Accounts
State of Alabama
Montgomery, Alabama

Costs and Fees — Opinions Overruled, Modified or Distinguished — Sentences.

1. No costs may be paid by the State or the county fine and forfeiture fund when a prisoner receives a suspended sentence only.

2. An unauthorized suspension of sentence invalidates that portion of the sentence to which it applies and is not tantamount to probation.

3. Quarterly Report of Attorney General, Volume 28, page 45, treating an unauthorized suspended sentence as tantamount to probation, is hereby overruled.

Opinion by Assistant Attorney General Webb.

Dear Sir:

Your request for an official opinion, bearing date of August 31, 1960, is as follows:

"I request your official opinion as to whether or not court costs may be taxed against the State or against the county fine and forfeiture fund, depending on the particular action, whenever a defendant is given a suspended sentence without any further order of the court placing the defendant on probation. I specifically refer to a ruling by your office in Quarterly Report of Attorney General, Volume 28, page 45."

I find no provision of law either for the payment of court costs by the State under the provisions of Title 45, Section 69, Code of Alabama 1940, as amended (1957 Pocket Parts), or for payment from the fine and forfeiture fund of the county under the provisions of Title 11, Section 83, Code of Alabama 1940, and Title 15, Section 393, Code of Alabama 1940, in cases where the sentence is merely suspended without further action by the trial court.

In my opinion, a suspended sentence operates to suspend that portion of the judgment to which it applies and, until there is some further order by the trial court disposing of the case, no costs could attach to the State or to the county fine and forfeiture fund.

In the opinion cited by you, Quarterly Report of Attorney General, Volume 28, page 45, this office treated an unauthorized suspension of sentence as tantamount to a probation. This position is incorrect. An unauthorized suspension of sentence has the effect of invalidating the remaining portion of the judgment to which it applies. **Eddins v. Popwell**, 33 Ala. App. 239, 35 So. 2d 47, affirmed 250 Ala. 453, 35 So. 2d 50. Accordingly, that portion of Quarterly Report of Attorney General, Volume 28, page 45, above cited, is hereby overruled.

Very truly yours,

MacDONALD GALLION
Attorney General

September 23, 1960

Mr. Melvin L. Strickland
Chairman, Board of Equalization
Mobile County Court House
Mobile, Alabama

Ad Valorem Taxes — Boards of Equalization.

1. An inventory and appraisal of all property in the county, whether listed or not, as provided under Sections 95 through 100 of Title 51, Code of Alabama 1940, is a special and extraordinary procedure by the Board of Equalization, which is separate and distinct from its regular yearly duties of inspecting, reviewing, revising and fixing the value of property returned or listed with the tax assessor under Section 103 of Title 51, supra, and expressly requires the approval and authorization of the county governing body.

2. Activities on the part of the Board of Equalization in inspecting certain specific pieces of property in the county, which parcels have been listed and returned for taxation, and in reviewing and revising the assessments thereon, come within the regular duties of the Board which are required to be performed each year under Title 51, Section 103, Code of Alabama 1940, and are not subject to the provisions of Sections 95 through 100 of Title 51, supra, requiring the approval of the county governing body.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion bearing date of August 18, 1960, is as follows:

"I am Chairman of the Mobile County Board of Equalization. As you know, our Board must inspect, review, revise and fix the value of all property returned to or listed with the Tax Assessor for taxation each year. This is required by Section 103, Title 51, Code of Alabama 1940.

"It is the desire of our Board to inspect and review the value of certain property in Mobile County at the present time. The property we propose to check was appraised about 14 years ago by the Equalization program, therefore we feel that due to the long period of time and with changing conditions we should make a recheck for inadequacies. We cannot revise or change the assessment for this year,

but we wish to inspect and review it at this time in order that our Board will have facts on which to intelligently act during the next year. Of course, we cannot possibly inspect and review all property in Mobile County between the time these returns are listed with the Tax Assessor and the end of this tax year as this is only a relatively short period of time when considering the total amount of property in Mobile County.

"We do not wish to make any inventory of all the property in the County as provided for in Title 51, Section 95, but merely wish to inspect and review certain specified pieces of property in order to compare them with certain pieces of property in the county. Since we are not making an inventory, but are merely going to inspect a relatively few individual pieces of property, is it necessary that our contemplated inspection and review be approved by the county governing body as though it were an inventory under Section 95 and 96 of Title 51, Code of Alabama 1940.

"If it is necessary that we secure the approval, must we secure the approval each time we go out to inspect any given piece of property?

It appears to our Board that Section 95 and 96 require only an approval of a county-wide inventory by the county governing body and that the required approval of an inventory has nothing to do with our duties to inspect and review the evaluation placed on individual or particular pieces of property. We believe it would be impossible for either the county governing body or this Board to perform any of its functions if the County governing body must first approve before our Board can inspect or review the evaluation of individual pieces of property. This is particularly true when there are thousands upon thousands of individual pieces of property in Mobile County.

You ask in effect whether the Board of Equalization can inspect certain pieces of property in Mobile County which have been listed for taxation and also review and revise the assessments made as to such parcels, without procuring the approval and authorization of the county governing board.

In answering such an inquiry, I wish to point out that the normal duties of the Board of Equalization require it to inspect, review, revise and fix the value on all properties which have been returned or listed with the tax assessor each year. This falls within the regular duties of the Board which are required to be performed under Title 51, Section 103, Code of Alabama 1940. Moreover, these duties are directory under the law. **Daffin v. Scotch Lumber Company**, 226 Ala. 33, 145 So. 452.

You state in this connection that the Board will not make an inventory

and appraisal of all property in the county as is provided for in Sections 95 through 100 of Title 51, supra. The inventory so prescribed is a special or extraordinary survey for the purpose of listing and making a comprehensive study of all property in the county, whether previously returned or not, and is not one of the regular duties of the Board described in Section 103, supra. Such an inventory then is an unusual and expensive procedure, and is as a matter of cost treated with accordingly under Sections 95 through 99 of Title 51, supra. This is obviously the reason for the requirement under Sections 95 through 98 of Title 51, supra, that the cost of such an inventory and general survey be approved by the county governing body.

As the action contemplated by the Board of Equalization in accordance with your statements will be limited to a review of certain pieces of property in Mobile County which have been previously returned for assessment, and seems to clearly fall within the general duties of the Board which are required to be performed under Section 103, supra. In my opinion the approval and authorization of such a review by the county governing body is not necessary or required. Your question, as restated above by me, thus is answered in the affirmative.

Yours very truly,

MacDONALD GALLION
Attorney General

September 26, 1960

Honorable John F. Watkins
Legal Counsel
Alabama League of Municipalities
Montgomery, Alabama

Appropriations — County Boards of Education — Funds— Municipalities — Schools.

1. A municipality may make appropriations from its general fund to supplement the salaries of teachers in schools operated by the county board of education within the corporate limits of the municipality.

2. In making such appropriations the governing body of the municipality may specify that the funds shall be used only to supplement the salaries of the home economics department, the coaching staff or like departments of the school.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion, under date of September 8, 1960, is as follows:

"Recently we have been presented with the following question by one of our member municipalities:

"May the governing body of a city or town in Alabama appropriate monies from the general fund of the municipality to the County Board of Education (of the County in which the municipality is located) for the purpose of supplementing the salaries of teachers in the county schools located in and serving the municipality, but over which schools the municipality has no control?

"After search, I have been unable to find a ruling of your office directly in point. Opinions of your office to Hon. H. L. Williams, Mayor of York, January 3, 1949, and Hon. C. A. Motley, Councilman of Autaugaville, August 12, 1948, are both closely related but not directly in point. In view of the importance of this question, we respectfully request your official opinion in answer thereto."

Your letter, under date of September 13, 1960, reads in part as follows:

"Assuming your affirmative answer to the question previously submitted, may the governing bodies of the cities and towns of Alabama appropriate municipal general funds to the County Board of Education (of the County in which the municipality is located) for the purpose of supplementing the salaries of specified teaching classifications in the county schools located in and serving the municipality, but over which schools the municipality has no control? That is, may the municipal governing body, in making such appropriations, specify that the funds shall be used only to supplement the salary or salaries of home economics department, the coaching staff, or like department within such schools or school?"

The Supreme Court of Alabama, in the case of **Carey v. City of Haleyville**, 230 Ala. 401, 161 So. 496, held that the governing body of a municipality has authority to expend public money in support of the public schools of the municipality even though title to the school buildings and lands is vested in the county board of education rather than in the municipality.

In an opinion reported in Quarterly Report of Attorney General, Vol. 26, page 15, this office held that a municipality may make needed repairs and purchase equipment for local schools in the municipality where the

title to the school buildings is in the county board of education and the schools are under the supervision and control of such board.

This office has held that a municipality may contribute funds to a public school located within its corporate limits for the purpose of constructing and equipping an athletic field on the school ground. Quarterly Report of Attorney General, Vol. 52, page 141.

A municipality may furnish water free of charge for a public swimming pool located upon the lands belonging to the county board of education and operated under the control and jurisdiction of such board. Quarterly Report of Attorney General, Vol. 54, page 5.

In an opinion rendered to Honorable Dennis Porter, Town Attorney, Chatom, Alabama, under date of October 4, 1956, this office held that a municipality may appropriate funds to a county high school located within its corporate limits, such funds to be used to purchase musical instruments and uniforms for the high school band, provided that title to said musical instruments and uniforms shall remain in the school.

Based upon the above authorities, I am of the opinion that a municipality may make appropriations from its general fund to supplement the salaries of teachers in schools operated by the county board of education within the corporate limits of the municipality.

Therefore, your first question is answered in the affirmative.

By virtue of Title 37, Sections 45, 96 and 429(11), Code of Alabama 1940, the management and control of municipal finances is vested in the governing body of the municipality.

For this reason, I am of the opinion that the governing body of a municipality may specify that funds appropriated by it to the type of school here considered shall be used only to supplement salaries of designated teachers.

Therefore, your second question is answered in the affirmative.

Very truly yours,

MacDONALD GALLION
Attorney General

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